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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,007	11/19/2003	Erik J. Burckart	RSW9-2003-0230US11 (7161-	6713
46320 7590 09/20/2007 CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 3020 BOCA RATON, FL 33487			EXAMINER NGUYEN, VAN H	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 09/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/717,007

Applicant(s)

BURCKART ET AL.

Examiner

VAN H. NGUYEN

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

1. This communication is responsive to the request for reconsideration filed 07/02/2007.

Claims 1-20 are currently pending in this application.

### **Claim Rejections - 35 USC § 112**

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 14 and 18, "*the machine*" lacks antecedent basis.

Dependent claims are rejected for fully incorporating the deficiencies of their base claims.

### Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims recite a “system” in the preamble only, the body of the claims *merely contains software components*. Therefore, the claims are software per se and do not fall within one of the four enumerated categories of patentable subject matter recited in section 101 (process, machine, manufacture or composition of matter).

Claims 7-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Under a broadest reasonable interpretation, the method claims 7 and 11 are unpatentable under section 101 because (i) they do not qualify as a “process” under section 101, as that term has been interpreted by case law, (ii) they seek to patent an abstract idea, and (iii) the “useful, concrete, and tangible result” test does not apply here, but the claim nevertheless does not meet that test. The method claims 7 and 11 differ from traditional process claims in several respects. For example, the claims do not recite any particular way of implementing the steps, nor does they require any machine or apparatus to perform the steps. In addition, the method claims do not recite any electrical, chemical, or mechanical acts or results, which are typical in traditional

process claims. Finally, the claims do not call for any physical transformation of an article to a different state or thing. While claim 7 does perform *receiving, selecting, and routing*; and claim 11 does perform a transformation of data by *inserting, adding, replacing*, they do not require any machine or apparatus to perform the steps. Because the claims are completely untethered from any sort of structure or physical step, they are directed to a disembodied concept. In other words, the claims are nothing but a disembodied abstract idea until it is instantiated in some physical way so as to be limited to a practical application of the idea. For example, claims 7 and 11 do not specify whether the entity performing the steps of *receiving, selecting, and routing* (claim 7) and *applying, inserting, adding, replacing* (claim 11) is a computer, a human, or something else. Accordingly, the claims are so broad that they are directed to the abstract idea itself, rather than a practical implementation of the concept. In addition, the claims are “so abstract and sweeping” that they would “wholly pre-empt” all applications (whether performed by a machine or a human) that are directed to *augmenting a hierarchy of layered applications and corresponding protocols*.

Dependent claims are rejected for fully incorporating the deficiencies of their base claims.

Claims which are broad enough to read on statutory subject matter or on non-statutory subject matter are considered non-statutory. Cf. In re Lintner, 458 F.2d 1013, 1015, 173 USPQ 560, 562 (CCPA 1972) (“Claims which are broad enough to read on obvious

subject matter are unpatentable even though they also read on nonobvious subject matter.”) During prosecution, applicant can amend to limit the claims to statutory subject matter.

### **Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gase (US 6,363,081).

#### **As to claim 1:**

Gase teaches a system for port and protocol sharing (*a port sharing protocol enables multiple applications to listen to the same port.... multiple applications are able to receive the same data packets received over one port; see the Abstract and col.1, line 51-col.2, line 9*) comprising:

- a layered hierarchy of application processes and protocols (*a port sharing protocol is implemented into the applications to facilitate delivery of data packets received over a single network port to all of the applications that contest ownership of that single port...multiple applications are able to receive the same*

*data packets received over one port; col.1, line 51-col.2, line 9 and col.3, lines 1, col.4, line 29);*

- *an interlayer communications process disposed between each layer in said layered hierarchy (the first client 24 is capable of supporting both the receiving protocol (e.g., TCP/IP) and the transmitting protocol (e.g., IPX). When a UDP packet 28 is received at the contested port 34, the primary application 30 retransmits the UDP packet 28 over the registered port to the third client 46 using the transmitting IPX protocol. The remote secondary application 48 receives and processes the data packet for its own purposes...The monitoring application 56 registers itself with each primary application 54(1)-54(3) via the registration ports 58(1)-58(3) corresponding to the contested ports 52(1)-52(3). That is, the monitoring application 56 submits a registration request to each primary application over a corresponding registration port. The primary applications add the monitoring application 56 to their distribution lists. When the primary applications receive data packets over their contested ports, they retransmit the packets to the monitoring application 56. As a result, the monitoring application 56 is able to keep tabs on packets arriving over multiple port; see the discussion beginning at col.4, line 22); and*
- *a communications layer programmed to moderate access by all of said application processes and protocols in said layered hierarchy to a single logical port (The client 24 supports multiple applications that might be interested in listening to the same network port. Each application is configured to support a port sharing*

*protocol that enables multiple applications to receive the packets being sent over the single "contested" port...The primary application 30 listens to all incoming data packets on the contested port 34. When a data packet is received, the primary application 30 delivers a copy of the data packet over the registration port 36 to all secondary applications registered in the distribution list 38; see the discussion beginning at col.3, line 1).*

**As to claim 2:**

Gase teaches each said interlayer communications process comprises: a list of application process and protocols coupled to said interlayer communications process at a next higher level in said hierarchy; and, at least one discrimination process programmed to select a particular one of said application process and protocols in said list to which to route selected incoming traffic (*see the discussion beginning at col.3, line 1*).

**As to claim 3:**

Gase teaches said communications layer comprises a process programmed to map incoming traffic in said single logical port to selected ones of said application process and protocols (*see the discussion beginning at col.3, line 1 and col.5, line 4*).

**As to claim 4:**

Gase teaches said at least one discrimination process comprises at least one selectable discrimination algorithm based upon at least one attribute associated with at least one of



said application processes and protocols (*see the discussion beginning at col.5, line 4*).

**As to claim 5:**

Gase teaches said at least one attribute comprises an attribute selected from, among other things, a number of layers of application processes and protocols disposed within said hierarchy above said interlayer communications process (*see the discussion beginning at col.5, line 4*).

**As to claim 6:**

Gase teaches said at least one selectable discrimination algorithm comprises a pluggable discrimination algorithm (*see the discussion beginning at col.5, line 23*).

**As to claim 7:**

The rejection of claim 1 above is incorporated herein in full. Additionally, Gase teaches selecting a particular application/protocol layer in a higher one of said two layers to which said traffic is to be routed; and, routing said traffic to said selected particular application/protocol layer (*see the discussion beginning at col.3, line 1*).

**As to claim 8:**

Gase teaches selecting a subsequent application/protocol layer in a higher one of two other layers to which said traffic is to be routed; and, routing said traffic to said further selected particular application/protocol layer (*see the discussion beginning at col.3, line*

1).

**As to claim 9:**

Gase teaches adding an additional application/protocol layer to the hierarchy; considering said additional application/protocol layer in said selecting step; and, when selected, routing said traffic to said additional application/protocol layer (*see the discussion beginning at col.5, line 39*).

**As to claim 10:**

Refer to the discussion of claim 5 above for rejection.

**As to claim 11:**

The rejection of claim 1 above is incorporated herein in full. Additionally, applying a discrimination algorithm to a selection process in which a particular application/protocol layer in a listing of adjacent application/protocol layers is selected to receive traffic flowing through the hierarchy (*see the discussion beginning at col.5, line 4*); inserting a new application/protocol layer adjacent to said particular application/protocol layer in the hierarchy; adding said new application/protocol layer to said listing; and, replacing said discrimination algorithm with another discrimination algorithm programmed to consider said new application/protocol layer during said selection process (*see the discussion beginning at col.5, line 39*).

**As to claim 12:**

Gase teaches performing said inserting, adding and replacing steps without decoupling or disabling other applications and protocols in the hierarchy (*see the discussion beginning at col.5, line 39*).

**As to claim 13:**

Refer to the discussion of claim 5 above for rejection.

**As to claims 14-16:**

Refer to the discussions of claims 7-9, respectively, for rejections.

**As to claim 17:**

Refer to the discussion of claim 5 above for rejection.

**As to claims 18 and 19:**

Refer to the discussions of claims 11 and 12, respectively, for rejections.

**As to claim 20:**

Refer to the discussion of claim 5 above for rejection.

### **Response to Arguments**

5. Applicant's arguments filed 07/02/2007 have been fully considered but they are not persuasive.

#### **A. Regarding the 35 USC § 101 rejections**

Applicants' arguments have been fully considered but are moot in view of the new ground(s) rejection.

#### **B. Regarding the 35 USC § 102 rejections**

Applicant argued in substance that the Gase reference do not teach the claim limitations.

The examiner's response is as follows. Firstly, in the Office Action, the examiner mapped each claimed limitation to specific element(s) and/or relevant passages in the Gase reference to show how the reference meets the claim limitations.

Applicant in response did not provide any underlying analysis as to why the portions of the prior art relied on did not support the examiner's position.

Secondly, this response by Applicant is insufficient to satisfy the requirement of specific argument to have the claims considered for patentability; in accordance with 37 C.F.R. § 1.111 Applicant must distinctly and specifically point out "how

the language of the claims patentably distinguishes them from the references”.

“The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a *bona fide* attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section”. See MPEP 714.02.

Applicant further argued that Gase does not teach the claimed “moderate access”

In response, Gate’s teaching” *“The client 24 supports multiple applications that might be interested in listening to the same network port. Each application is configured to support a port sharing protocol that enables multiple applications to receive the packets being sent over the single "contested" port...The primary application 30 listens to all incoming data packets on the contested port 34. When a data packet is received, the*

*primary application 30 delivers a copy of the data packet over the registration port 36 to all secondary applications registered in the distribution list 38" [see the discussion beginning at col.3, line 1] reads-on the limitations as claimed.*

During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." In re Hyatt 21 1 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (1989) "During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process."

Applicant should set forth claims in language that clearly, distinctly, unambiguously, and uniquely define the invention.

Art Unit: 2194

### Contact Information

6. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

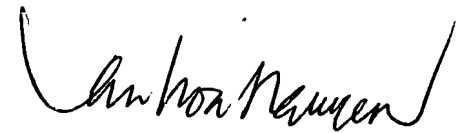
Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM 6:00PM. The examiner can also be reached on alternative Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM THOMSON can be reached at (571) 272-3718.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action should be mailed to:**

Commissioner for patents  
P O Box 1450  
Alexandria, VA 22313-1450



**VAN H. NGUYEN**  
**PRIMARY EXAMINER**